

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

PATRICK LEE DUNCAN	§	
VS.	§	CIVIL ACTION NO. 9:22cv26
MARVIN DUNBAR, ET AL.	§	

REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Patrick Lee Duncan, proceeding *pro se*, filed the above-styled lawsuit. The case was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b) for findings of fact, conclusions of law, and recommendations for the disposition of the case.

## Discussion

Rule 4(m) of the Federal Rules of Civil Procedure states as follows:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Summonses were issued and mailed to plaintiff on June 7, 2022. Plaintiff acknowledged receipt of them no later than July 28, 2022, more than 90 days ago. There is no indication in the record that any of the defendants have been properly served with process or that plaintiff has requested extra time for service. As a result, plaintiff's claims should be dismissed without prejudice.

Recommendation

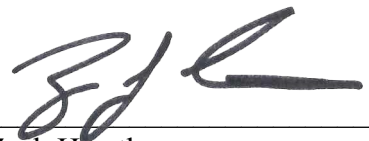
This lawsuit should be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

Objections

Within 14 days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file with the clerk specific written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within 14 days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1429 (5th Cir. 1996) (*en banc*).

SIGNED this 7th day of November, 2022.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', written over a horizontal line.

Zack Hawthorn  
United States Magistrate Judge